



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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9/28/98

EPA Region 5 Records Ctr.



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SEP 28 1998

REPLY TO THE ATTENTION OF:

C-14J

Vincent S. Oleszkiewicz
Baker & McKenzie
One Prudential Plaza
130 East Randolph Dr.
Chicago, Illinois 60601

Re: Lindsay Light II Site Right-of-Way Agreement

Dear Mr. Oleszkiewicz:

I recently received a copy of your August 14, 1998 letter to Mr. Mort P. Ames of the City of Chicago Corporate Counsel's office with the enclosed revised draft right-of-way agreement. I understand from your letter and from conversations with On-Scene Coordinators Verneta Simon and Fred Micke, that the current development plan will not result in the removal of the existing contamination near Illinois Street and Columbus Drive. After reviewing the revised draft, this Agency still has significant problems regarding the future management of the contaminated material in the right-of-ways. From this Agency's view, the primary objectives of the Agreement should be to assure that persons working in the contaminated area take adequate safety precautions to limit exposure and also to prevent dispersal of the contaminated material. Those objectives can be accomplished only if adequate notice of the presence of the contaminated material is provided. It is troubling that the revised draft is noticeably vague with respect to critical emergency and notice procedures. The concerns are reflected in the specific comments that follow.

On page four, Paragraph 4 states that "... the City agrees that it will limit access" Yet, it is not apparent how the City will accomplish that. The manner in which access will be limited should be detailed.

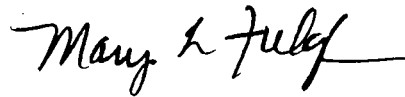
Also, on pages four and five, in Paragraph 4 b. there are no procedures for assuring the material is managed properly during "emergency excavation." It is during an emergency, the repair of a utility failure for example, that there is great potential for improper management of the contaminated material and worker exposure to the contamination. The procedures should be detailed in this document to ensure that their adequacy and that all parties are properly apprised of them. Also, while the Agreement states that "sixty day notice" will be provided if the City needs to conduct an excavation, the form of notice the City will provide also needs to be described with particularity. Oral notice within a given time frame followed by written notice, certified and return receipt requested would assure actual notice. Also, to whom, by title or function will the notice be provided?

On page five, in Paragraph 5. the City agrees to provide notification to any person seeking to excavate but there is no description of the measures that the City will take to ensure that its various departments or offices provide such notice. Again, the timing and form of notice the City will provide needs to be described with particularity. Similar details should be included in the description of the notice to the PRPs described in Paragraph 5. If the form of notice is not detailed, a casual oral notice might be overlooked by the party seeking to excavate or it might not be relayed to the appropriate PRP personnel.

On page six, in Paragraph 6 it is noted that the Agreement will "run with the land" but there is no mention that the Agreement will be recorded as a deed notice or other instrument. How do the parties intend to comply with this requirement?

I appreciate the opportunity to comment upon your draft document and look forward to seeing the revised Agreement. Please call me if you have any questions about these comments.

Sincerely,



Mary L. Fulghum
Associate Regional Counsel

Enclosure

cc: Mort P. Ames
Richard Meserve

bcc: Fred Micke
Verneta Simon
Larry Jensen